

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 02.02.2023

Date of decision: 14.03.2023

+ CS(COMM) 1083/2018

S & P INFRASTRUCTURE DEVELOPERS (P) LTD

..... Plaintiff

Through: Ms.Anusuya Salwan,
Mr.Bankim Garg & Ms.Sonika
Singh, Advs.

versus

USHA DEVI & ORS

..... Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

1. The present suit was originally filed by the plaintiff praying for the following relief:-

“21. In view of the above the plaintiff respectfully prays that this Hon'ble Court may be pleased to;

A. pass a decree of specific performance directing the defendants to perform the two Receipt cum Agreement to Sell dated 12.10.2013 and convey the title of:

(i) Basement floor along with two car parking in stilt in property bearing No. Plot No. 23 at Block 1-,Rangpuri Residential Area, Vasant Kunj. New Delhi.

(ii) Third floor along with two car parking in stilt in property Plot No. 23 at Block 1-, Rangpuri Residential Area, Vasant Kunj. New Delhi in favour of the plaintiff.

B. And/or if for any reasons this Hon'ble Court comes to the conclusion that the plaintiff cannot be allowed the relief of

Signature Not Verified

Digitally Signed By:SUNIL

Signing Date: 15.03.2023

18:32:57

CS(COMM) 1083/2018

specific performance of the agreement to sell dated 12.10.2013 then in the alternative the plaintiff submits that recovery / Damages to the tune of Rs.4,65,00,000/- be awarded along with interest up to the date of realization @24% p.a.

C. Pass a decree of permanent injunction permanently restraining the defendants, their agents, or assigns, from creating, conveying, transferring any third party rights or otherwise delaying with the suit property.

D. Costs be awarded in favour of the plaintiff and against the defendant.”

2. On 23.05.2017, the following order was passed by this Court:-

“I.A.No.25860/2015

Issue fresh notice to the legal heirs of late Sh.Anar Singh by registered AD as well as dasti, returnable before the Joint Registrar on 04th September, 2017.

CS(OS) No.1523/2015

Learned counsel for the plaintiff states that after filing of the present suit, the plaintiff has purchased the suit property in an auction conducted by defendant no.3 under the SARFAESI Act.

Consequently, the present suit will survive only as a suit for recovery against defendant nos.1 & 2 as well as the legal heirs of late Sh.Anar Singh. The defendant no.3-State Bank of Travancore is deleted 1 from the array of parties and prayers 'A' and 'C' of paragraph 21 are deleted.

Let an amended memo of parties and amended plaint be filed within a period of six weeks.”

3. In view of the above order, the plaintiff filed an amended plaint, confining its prayer to recovery of an amount of Rs.4,65,00,000/- (Rupees Four Crores Sixty Five Lakhs only) along with interest @

24% per annum due thereon from the defendants along with the costs of the Suit.

CASE OF THE PLAINTIFF

4. It is the case of the plaintiff that Late Shri.Anar Singh and the defendant no.1 (hereinafter referred to as the ‘Co-Owners’) were owners of the property bearing Plot No. 23 at Block-1, Rehabilitation of Evictees from Village Nalgat Dawat, Rangpuri Residential Scheme, Vasant Kunj, New Delhi- 110070 (hereinafter referred to as the ‘Suit Property’) purchased by them by way of a Registered Sale Deed dated 14.08.2012.

5. The Suit Property was a vacant plot of land, and the plaintiff was approached by the co-owners of the Suit Property for construction of a residential building, comprising of four storeys. It was also affirmed by the co-owners in the Construction Agreement dated 17.10.2012 that the suit property was free from all encumbrances and there was no mortgage or lien of any kind on the suit property from any authority, institution, agency, party or person.

6. It is the case of the plaintiff that since the Construction Agreement could not go through due to recession in the market, it was decided by the plaintiff and the co-owners of the suit property that the construction would be carried out by another builder.

7. The plaintiff thereafter entered into two separate Receipt cum Agreements to Sell (hereinafter referred to as the ‘Agreements’) both dated 12.10.2013 with the co-owners, where-under the following floors/space in the suit property was agreed to be sold by the co-owners to the plaintiff for the below-mentioned sale consideration, and simultaneously acknowledging receipt of part sale consideration, as under:

- i. With regard to the “Basement with 2 Car Parking in Stilt”, it was agreed that the said property was to be sold at a consideration of Rs.1,15,00,000/- (Rupees One Crore Fifteen Lakhs only), and it was duly acknowledged that the plaintiff has already paid Rs.1,00,00,000/- (Rupees One Crore only) by way of DD/Cash/Cheque. It was further stated that the balance amount of Rs.15,00,000/- would be paid by the plaintiff to the co-owners of the suit property at the time of registration of the Sale Deed;
- ii. With regard to the “Third floor with 2 Car Parking in Stilt”, it was agreed that the said property was to be sold at a sale consideration of Rs.3,50,00,000/- (Rupees Three Crores Fifty Lakhs only) to the plaintiff, and it was acknowledged that the plaintiff has already paid Rs.3,36,51,749/- (Rupees Three Crores Thirty-Six Lakhs Fifty-One Thousand Seven Hundred and Forty Nine only) by way of DD/Cash/Cheque. It was further stated that the balance amount of Rs.13,48,251/- would be paid by the plaintiff to the co-owners of the suit property at the time of registration of the Sale Deed.

8. It is the case of the plaintiff that through the media reports, the plaintiff learnt that Late Shri Anar Singh had committed suicide on 16.11.2014. It was further learnt that he had, on 12.12.2012, mortgaged the suit property to the State Bank of Travancore, who was originally arrayed as the defendant no.3 in the Suit. The defendant no.3 had initiated proceedings before the learned Debt Recovery Tribunal against Late Shri Anar Singh.

9. As noted hereinabove, the plaintiff originally filed the present Suit seeking a decree of Specific Performance of the two Agreements, or in the alternative, recovery of an amount of Rs. 4,65,00,000/- along with interest at the rate of 24% per annum. The suit was later amended to retain only the prayer of recovery

COURT PROCEEDINGS IN THE SUIT AND EVIDENCE OF THE PLAINTIFF:

10. The plaintiff had filed the suit impleading Mrs.Usha Devi as defendant no.1, Mr.Mohit Gupta, son of late Shri Anar Singh as defendant no.2, and the State Bank of Travencore as defendant no.3. Summons were issued to the defendants vide order dated 22.05.2015.

11. The defendant nos.1 and 2 were served by way of publication, as is recorded in the order 13.10.2015.

12. This Court, vide its order dated 18.11.2015, had stayed the auction of the suit property by the then defendant no.3- State Bank of Travancore. Thereafter, the said defendant no.3 had filed an application praying for the vacation of the *interim* order granted in favour of the plaintiff.

13. This Court, by its order dated 22.02.2016, dismissed the plaintiff's application filed under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908, and vacated the *interim* order on the auction of the suit property, observing that the suit property had been mortgaged to the defendant no.3 and that the defendant no.3 had the right to auction the suit property. At the same time, this Court restrained the defendant nos. 1 and 2 from dealing with their other property bearing no. B-2, Vasant Kunj, New Delhi [the address was later corrected by the order dated 13.02.2019 passed in FAO(OS) (COMM) 30/2019, to plot no.2 at Block B-1, (Rangpuri Residential

Scheme) Vasant Kunj, New Delhi, 110070 and the agricultural properties mentioned in paragraphs 7 and 8 of the application-I.A. 11127/2015.

14. As none appeared on behalf of the defendant nos. 1 and 2, this Court, by the order dated 05.05.2016, proceeded the defendant nos. 1 and 2 *ex-parte*.

15. The State Bank of Travancore sold the property at Rangpuri, Vasant Kunj in an auction. In light thereof, this Court, vide its order dated 23.05.2017, deleted the defendant no. 3 from the array of parties and allowed the plaintiff to amend the suit to the extent that the present suit will only survive as a suit for recovery against defendant nos. 1 and 2, as well as the legal heirs of Late Shri Anar Singh.

16. The defendant nos. 3 to 7 were impleaded in the present suit as the Legal Heirs of Late Shri Anar Singh, vide the order dated 31.07.2018 (in the order it is wrongly mentioned that defendant nos. 4 and 5 are being impleaded as Legal Heirs of deceased Shri Anar Singh).

17. Vide the order dated 14.08.2018, the defendant nos.3 to 7 were also proceeded *ex-parte* (in the order it is wrongly recorded as defendant nos. 4 to 7 were proceeded *ex-parte*). Further, the plaintiff was permitted to file *ex-parte* evidence by way of affidavits.

18. The plaintiff filed an affidavit by way of evidence of PW1-Shri Sanjeev Gaur, as Ex PW1/X, who was examined and discharged on 28.08.2018. In his affidavit, he had deposed about the facts as narrated in the plaint.

19. On an application of the plaintiff-I.A. 16726/2018, this Court, vide its order dated 19.12.2018, directed the Sub-Registrar, Palika Bhawan, New Delhi, not to register any sale deed with respect to

property no. B-2, Vasant Kunj, New Delhi [the address was later corrected to plot no.2 at Block B-1, (Rangpuri Residential Scheme) Vasant Kunj, New Delhi, 110070 by the order dated 13.02.2019 passed in FAO(OS) (COMM) 30/2019]

20. Thereafter, on an application of the plaintiff, being I.A. 17558/2019, vide order dated 26.05.2022, the plaintiff was granted leave to produce additional evidence in the form of PW2- Mrs. Arti Srivastava, and PW3- Ms. Krishna Pandey.

21. PW2- Mrs. Arti Srivastava was examined on 29.07.2022. In her affidavit of evidence (Ex. PW2/A), she states that she had signed the Receipt Cum Agreement to Sell dated 12.10.2013 as the nominee of the plaintiff company and that the consideration reflected therein was paid by the plaintiff.

22. The plaintiff, thereafter, filed an application-I.A. 19664/2022, seeking to place on record additional documents, that is, the Board Resolution dated 06.12.2019 (Ex. PW3/1) authorising Ms. Krishna Pandey for the conduct of litigation; Original Agreement for Construction dated 17.10.2012 (Ex PW3/2); Certificate dated 08.12.2014 of the Chartered Accountant (Ex. PW3/3) certifying that Rs. 4,36,51,749/- has been paid by the plaintiff towards purchase of the suit property as set out in the two Receipt cum Agreements to Sell, both dated 12.10.2013 (Ex. PW3/5); and the Ledger Account of Late Shri Anar Singh maintained by the plaintiff (Ex. PW3/4).

23. The above application was allowed by this Court vide its order dated 18.10.2022.

24. PW3- Ms. Krishna Pandey was examined on 11.01.2023. She proved the above referred exhibits, apart from stating the facts in the plaint.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PLAINTIFF:

25. Based on the above facts and evidence on record, the learned counsel for the plaintiff prays for a decree for a sum of Rs. 4,36,51,749/- along with interest @ 24% per annum to be passed in favour of the plaintiff and against the defendants. She further prays that the interim orders dated 22.02.2016 and 19.12.2018 with respect to Plot No. 2, Block B-1, (Rangpuri Residential Scheme), Vasant Kunj, New Delhi be continued upto the date the decree passed is executed.

ANALYSIS AND FINDING OF THE COURT

26. I have considered the submissions made by the learned counsel for the plaintiff.

27. The only surviving issue that remains in this suit is pertaining to the prayer for recovery of the amount of Rs. 4,36,51,749/-. The plaintiff has drawn my attention to the Receipt cum Agreements to Sell, both dated 12.10.2013 (Ex. PW 3/5), which are detailed as under:

- i. In terms of the first Agreement dated 12.10.2013 executed between the plaintiff, with Ms. Krishna Pandey (PW 3) signing on behalf of the plaintiff in her capacity as its Director, and the co-owners, the Basement with 2 Car Parking in Stilt of the Suit Property was agreed to be sold to the plaintiff-Company. The Agreement acknowledged receipt of Rs.1 Crore as part sale consideration by the co-owners. The relevant clause is reproduced hereinbelow:

“NOW THIS AGREEMENT WITNESS AS UNDER-

- 1. That the entire consideration amount of the ownership right, interest, liens and titles of the FIRST PARTY in the said PROPERTY is fixed between the*

Parties at Rs 1,15,00,000/- (Rupees One Crore Fifteen Lakhs only) out of which Rs 1,00,00,000/- (Rupees One Crore Only) by way of DD/cash/cheque has been received by the FIRST PARTY from the SECOND PARTY as advance money in respect of said PROPERTY , and the FIRST PARTY hereby confirms and acknowledges the same.

2. *That the balance amount of Rs 15,00,000/- (Rupees Fifteen Lakhs Only) will be paid by the SECOND PARTY to the FIRST PARTY at the time of registration of Sale Deed."*

- ii In terms of the second Agreement dated 12.10.2013 executed between Mrs.Arati Srivastava (PW2) and the co-owners, the Third Floor with 2 Car Parking in Stilt of the Suit Property was agreed to be sold to Mrs.Arati Srivastava (nominee of the plaintiff-Company). The Agreement acknowledged receipt of Rs.3,36,51,749/- by the co-owners as part sales consideration. The relevant clause is reproduced hereinbelow:

"NOW THIS AGREEMENT WITNESS AS UNDER-

1. *That the entire consideration amount of the ownership right, interest, liens and titles of the FIRST PARTY in the SAID PROPERTY is fixed between the Parties at Rs 3,50,00,000/- (rupees Three Crore Fifty Lakhs Only) out of which Rs 3,36,51,749/- (Rupees Three Crore Thirty six Lakhs fifty one thousand seven hundred forty nine Only) by way of DD/cash/cheque has been received by the FIRST PARTY from the SECOND PARTY as advance money in respect of said PROPERTY , and the FIRST PARTY*

hereby confirms and acknowledges the same.

2. *That the balance amount of Rs 13,48,251/- (Rupees Thirteen Lakhs Fifty Eight thousand Two Hundred Fifty one Only) will be paid by the SECOND PARTY to the FIRST PARTY at the time of registration of Sale Deed.*

28. Mrs. Arti Srivastava has been examined as PW2, and she has stated that the said transaction was entered into by her for and on behalf of the plaintiff Company as its Nominee. She states that the payment recorded in the Receipt cum Agreement to Sell has been paid by the plaintiff Company to Late Shri Anar Singh and to the Defendant No. 1.

29. From the evidence on record, the plaintiff has been able to establish that the plaintiff has paid a total sum of Rs. 4,36,51,749/- to Late Shri Anar Singh and the defendant no. 1. The receipt of this payment has been duly acknowledged by Late Shri Anar Singh and the defendant no.1 in the two Receipt Cum Agreements to Sell. The plaintiff has also been able to establish that the Agreement to sell could not be performed due to breach of Late Shri Anar Singh and the Defendant No. 1.

30. As noted herein above, the defendants have remained *ex parte* and, therefore, the evidence of the plaintiff has remained unrebutted.

31. Keeping in view the aforesaid facts and circumstances, the documents on record, the evidence of the plaintiff, as well as the arguments advanced by the learned counsel for the plaintiff, this Court is of the view that the plaintiff has proved its case and is entitled to a decree of recovery of Rs. 4,36,51,749/- from the defendant nos. 1 to 7, being the amount paid by the plaintiff to Late Shri Anar Singh and

the Defendant No. 1. The plaintiff is held not entitled to the balance amount claimed, as such payment has not been paid by the plaintiff to Shri Anar Singh or Defendant No. 1 nor the plaintiff has led any evidence of damages suffered by it due to the breach of the two Receipt cum Agreement to sell by the defendants.

32. The plaintiff shall also be entitled to payment of interest @ 6% per annum from the date of payment made by the plaintiff to Shri Anar Singh and the Defendant No. 1, till the recovery thereof from the defendants.

33. The plaintiff shall also be entitled to a decree of costs of the Suit.

34. The interim orders dated 23.05.2017 and 19.12.2018 as explained by the order of 13.02.2019 referred to hereinabove shall continue till the recovery of the decretal amount by the plaintiff.

35. The Suit is decreed in the above terms. Let the Decree Sheet be drawn accordingly.

NAVIN CHAWLA, J.

MARCH 14, 2023/Ais